

OCT 13 1977

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

October Term, 1977.

No. 77-131.

DELAWARE STATE BOARD OF EDUCATION, et al.,
Petitioners,

v.

BRENDA EVANS, et al.,
Respondents.

No. 77-223.

CLAYMONT SCHOOL DISTRICT and
STANTON SCHOOL DISTRICT,
Petitioners,

v.

BRENDA EVANS, et al.,
Respondents.

No. 77-235.

NEWARK SCHOOL DISTRICT, et al.,
Petitioners,

v.

BRENDA EVANS, et al.,
Respondents.

No. 77-236.

NEW CASTLE-GUNNING BEDFORD SCHOOL DISTRICT,

v.

BRENDA EVANS, et al.,
Respondents.

No. 77-239.

MARSHALLTON-McKEAN SCHOOL DISTRICT,
Petitioner,

v.

BRENDA EVANS, et al.,
Respondents.

**On Petition for Writ of Certiorari to the United States
Court of Appeals for the Third Circuit.**

PETITION FOR REHEARING.

[Names of Counsel on Inside Front Cover]

PHILIP B. KURLAND,
ROTHSCHILD, BARRY & MYERS,
Two First National Plaza,
Chicago, Illinois. 60603
(312/372-2345)
Of Counsel.

WILLIAM PRICKETT,
MASON E. TURNER, JR.,
PRICKETT, WARD, BURT & SANDERS,
1310 King Street,
Wilmington, Delaware. 19899

RICHARD R. WIER, JR.,
Attorney General of the State of
Delaware,

REGINA M. SMALL,
Deputy Attorney General of the
State of Delaware,
Wilmington Tower Building,
Wilmington, Delaware. 19899
*Attorneys for the Delaware State
Board of Education, Petitioners.*

JAMES T. MCKINSTRY,
RICHARDS, LAYTON & FINGER,
4072 DuPont Building,
Wilmington, Delaware. 19899
*Attorneys for Claymont School
District and Stanton School
District, Petitioners.*

JOHN P. SINCLAIR,
350 Delaware Trust Building,
Wilmington, Delaware. 19899
*Attorney for Newark School District,
Petitioner.*

DAVID F. ANDERSON,
POTTER, ANDERSON & CORROON,
350 Delaware Trust Building,
P. O. Box 951,
Wilmington, Delaware. 19899
*Attorneys for New Castle-Gunning
Bedford School District, Petitioner.*

EDWARD W. COOCH, JR.,
COOCH & TAYLOR,
601 Market Tower,
Wilmington, Delaware. 19801
*Attorneys for the Marshallton-
McKean School District, Petitioner.*

LINO A. GRAGLIA,
3205 Taylor's Drive,
Austin, Texas. 78703
Of Counsel.

IN THE
Supreme Court of the United States

—
OCTOBER TERM, 1977
—

No. 77-131

DELAWARE STATE BOARD OF EDUCATION, et al.,
Petitioners,

v.

BRENDA EVANS, et al.,
Respondents.

—
No. 77-223

CLAYMONT SCHOOL DISTRICT and
STANTON SCHOOL DISTRICT,
Petitioners,

v.

BRENDA EVANS, et al.,
Respondents.

—
No. 77-235

NEWARK SCHOOL DISTRICT, et al.,
Petitioner,

v.

BRENDA EVANS, et al.,
Respondents.

No. 77-236

NEW CASTLE-GUNNING BEDFORD
SCHOOL DISTRICT,

Petitioner,

v.

BRENDA EVANS, et al.,

Respondents.

—
No. 77-239

MARSHALLTON-McKEAN SCHOOL DISTRICT,

Petitioner,

v.

BRENDA EVANS, et al.,

Respondents.

—
ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT.
—

PETITION FOR REHEARING.

At the close of the 1976 Term, this Court was asked to resolve the question whether a remedy in a desegregation case required a constitutional violation and whether the remedy must be confined to a cure of such constitutional violations that may exist. The Court, adhering to the position it took earlier in *Washington v. Davis*, 426 U. S. 229 (1976), and *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U. S. 252 (1977), remanded the cases to the trial courts to determine whether there were intentional constitutional violations and to provide remedies measured by constitutional violations. *Dayton Board of Education v. Brinkman*, — U. S. —, 97 S. Ct. 2766 (1977), *Brennan v. Armstrong*, — U. S. —, 97 S. Ct. 2907 (1977), *School District of Omaha v. United States*, — U. S. —, 97 S. Ct. 2905 (1977), cf. *Austin Independent School District v. United States*, — U. S. —, 97 S. Ct. 517 (1976). The instant case presented the very same issues, but the Court did not treat this case as it had treated the others. Instead, it simply denied our petitions by a vote of four to three. 46 U. S. L. W. 3220 (3 October 1977).

On the first day of hearings this week, 11 October, 1977, the Court in *Massachusetts v. Feeney*, No. 76-265, reiterated its position on the need for a finding of intentional discrimination as a condition precedent and remanded the case for a finding as to the existence of such violation and for the framing of a remedy to meet any such violation. Our case, therefore, falls into a unique category; the rules applicable to all other desegregation cases and those applied in all other discrimination cases are, as a

result of the denial of certiorari, not to be applicable in Delaware.

When it is recognized that this consequence of non-applicability of general constitutional principles to this case derives from a two-to-one decision in the trial court, a four-to-three decision in the Court of Appeals for the Third Circuit, sitting en banc, and a denial of certiorari by this Court, with three of the seven Justices who participated voting to grant certiorari (see *Stern & Gressman, Supreme Court Practice* 208 (4th Ed. 1969); *Harris v. Pennsylvania Railroad*, 361 U. S. 15, 18 n. 2 (1959)), and remand so that this case may be treated in the same way as this Court has ordered all similar cases to be treated, we respectfully suggest that the Court reconsider its denial of certiorari, grant certiorari, and remand to the trial court to delineate the alleged constitutional violation or violations and frame a remedy directed to the cure of any such violations that it may find.

LINO A. GRAGLIA,
3205 Taylor's Drive,
Austin, Texas. 78703
Of Counsel.

Respectfully submitted,

WILLIAM PRICKETT,
MASON E. TURNER, JR.,
PRICKETT, WARD, BURT & SANDERS,
1310 King Street,
Wilmington, Delaware. 19899

RICHARD R. WIER, JR.,
Attorney General of the State of
Delaware,

REGINA M. SMALL,
Deputy Attorney General of the
State of Delaware,
Wilmington Tower Building,
Wilmington, Delaware. 19899
*Attorneys for the Delaware State
Board of Education, Petitioners.*

PHILIP B. KURLAND,
ROTHSCHILD, BARRY & MYERS,
Two First National Plaza,
Chicago, Illinois. 60603
(312/372-2345)
Of Counsel.

JAMES T. MCKINSTRY,
RICHARDS, LAYTON & FINGER,
4072 DuPont Building,
Wilmington, Delaware. 19899
*Attorneys for Claymont School
District and Stanton School
District, Petitioners.*

JOHN P. SINCLAIR,
350 Delaware Trust Building,
Wilmington, Delaware. 19899
*Attorney for Newark School District,
Petitioner.*

DAVID F. ANDERSON,
POTTER, ANDERSON & CORROON,
350 Delaware Trust Building,
P. O. Box 951,
Wilmington, Delaware. 19899
*Attorneys for New Castle-Gunning
Bedford School District, Petitioner.*

EDWARD W. COOCH, JR.,
COOCH & TAYLOR,
601 Market Tower,
Wilmington, Delaware. 19801
*Attorneys for the Marshallton-
McKean School District, Petitioner.*

CERTIFICATE OF COUNSEL

**IN THE
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1977

No. 77-131

**DELAWARE STATE BOARD OF EDUCATION, et al.,
*Petitioners,***

v.

**BRENDA EVANS, et al.,
*Respondents.***

As one of the counsel for the Petitioners herein, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

PRICKETT, WARD, BURT & SANDERS

**By WILLIAM PRICKETT,
1310 King Street,
Wilmington, Delaware 19899,
*Attorney for the Delaware State
Board of Education, Petitioners.***